
SENATE BILL No. 116

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1-7.5-3.

Synopsis: Unsupervised estates. Specifies additional powers that a personal representative may exercise without order of the court in the administration of an unsupervised estate.

Effective: July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 116

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-7.5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. **(a)** Subject to section
3 2(d) of this chapter, a personal representative who administers an estate
4 under this chapter may do the following without order of the court:

5 (1) Retain assets owned by the decedent pending distribution or
6 liquidation including those in which the representative is
7 personally interested or which are otherwise improper for trust
8 investment.

9 (2) Receive assets from fiduciaries or other sources.

10 (3) Perform, compromise, or refuse performance of the decedent's
11 contracts that continue as obligations of the estate, as ~~he~~ **the**
12 **personal representative** may determine under the circumstances.
13 In performing enforceable contracts by the decedent to convey or
14 lease land, the personal representative, among other possible
15 courses of action, may:

16 ~~(i)~~ **(A)** execute and deliver a deed of conveyance for cash
17 payment of all sums remaining due or the purchaser's note for



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the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) **(B)** deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally.

(6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.

(7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings.

(8) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration.

(9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration.

(10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(11) Abandon property when, in the opinion of the personal representatives, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.

(12) Vote stocks or other securities in person or by general or limited proxy.

(13) Pay calls, assessments, and other sums chargeable or

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1 accruing against or on account of securities, unless barred by the
2 provisions relating to claims.

3 (14) Hold a security in the name of a nominee or in other form
4 without disclosure of the interest of the estate but the personal
5 representative is liable for any act of the nominee in connection
6 with the security so held.

7 **(15) Hold, manage, safeguard, and control the estate's real**
8 **and personal property**, insure the assets of the estate against
9 damage, loss, and liability, and **himself insure the personal**
10 **representative personally** against liability as to third persons.

11 (16) Borrow money with or without security to be repaid from the
12 estate assets or otherwise and advance money for the protection
13 of the estate.

14 (17) Effect a fair and reasonable compromise with any debtor or
15 obligor, or extend, renew, or in any manner modify the terms of
16 any obligation owing to the estate. If the personal representative
17 holds a mortgage, pledge, or other lien upon property of another
18 person, ~~he~~ **the personal representative** may, in lieu of
19 foreclosure, accept a conveyance or transfer of encumbered assets
20 from the owner thereof in satisfaction of the indebtedness secured
21 by lien.

22 (18) Pay taxes, assessments, compensation of the personal
23 representative, and other expenses incident to the administration
24 of the estate.

25 ~~(19) sell or exercise stock subscription or conversion rights and~~
26 ~~consent, directly or through a committee or other agent, to the~~
27 ~~reorganization, consolidation, merger, dissolution, or liquidation~~
28 ~~of a corporation or other business enterprise;~~

29 **(19) Do any of the following:**

30 **(A) Hold an interest in a proprietorship, partnership,**
31 **limited liability company, business trust, corporation, or**
32 **another domestic or foreign form of business or enterprise.**

33 **(B) Continue a business.**

34 **(C) Take any action that may be taken by shareholders,**
35 **partners, members, or property owners, including**
36 **contributing additional capital to or merging,**
37 **consolidating, reorganizing, recapitalizing, dissolving, or**
38 **otherwise changing the form of the business organization.**

39 (20) Allocate items of income or expense to either estate income
40 or principal, as permitted or provided by IC 30-2-14.

41 (21) Employ persons, including attorneys, auditors, investment
42 advisors, or agents, even if they are associated with the personal

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representative, to advise or assist the personal representative in the performance of ~~his~~ **the personal representative's** administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary.

(22) prosecute or defend claims or proceedings in any jurisdiction **Do any of the following concerning a claim or demand made in favor of or against the estate** for the protection of the estate and of the personal representative in the performance of ~~his~~ **the personal representative's** duties:

(A) Release, assign, settle, compromise, or contest the claim or demand.

(B) Participate in mediation or submit to arbitration to resolve any dispute concerning the claim or demand.

(C) Extend the time for payment of the claim or demand.

(D) Abandon the claim or demand.

(23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(i) in the same business form for a period of not more than five

(5) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporations and retention in the estate;

(24) Select a settlement option under any qualified or nonqualified benefit or retirement plan, annuity, or life insurance payable to the estate, and take appropriate action to collect the proceeds.

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims;

(25) Inspect and investigate property held, directly or

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indirectly, by the personal representative for the purpose of:

(A) determining the application of environmental law with respect to the property; and

(B) doing the following:

(i) Take action to prevent, abate, or remedy an actual or potential violation of an environmental law affecting the property, whether taken before or after the assertion of a claim or the initiation of governmental enforcement by federal, state, or local authorities.

(ii) Compromise claims against the estate that may be asserted for an alleged violation of environmental law.

(iii) Pay the expense of inspection, review, abatement, or remedial action to comply with the environmental law.

~~(27)~~ (26) Distribute assets of the estate upon such terms as ~~he~~ the personal representative may impose. ~~and~~ To the extent practicable, taking into account the decedent's probable intention, the power to distribute assets includes the power to:

(A) pay an amount to a distributee who is under a legal disability or whom the personal representative reasonably believes to be incapacitated by:

(i) paying the amount directly to the distributee or applying the amount for the distributee's use and benefit;

(ii) paying the amount to the guardian appointed for the distributee;

(iii) paying the amount to a custodian under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) or a custodial trustee under the Uniform Custodial Trust Act (IC 30-2-8.6); or

(iv) paying the amount to the trustee of a trust established by the decedent or by the personal representative under subsection (b); and

(B) make distributions of estate income and principal in kind, in cash, or partly in each, in shares of differing composition, without regard to the income tax basis of specific property allocated to a distributee in divided or undivided interests.

~~(28)~~ (27) Perform any other act necessary or appropriate to administer the estate.

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust to make distributions to a distributee who is under a legal disability or

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1 whom the personal representative reasonably believes is
2 incapacitated. In establishing a trust under this subsection, a
3 personal representative may exercise:

4 (1) the authority given to custodians under the Indiana
5 Uniform Transfers to Minors Act (IC 30-2-8.5) to create a
6 trust that satisfies the requirements of Section 2503 of the
7 Internal Revenue Code and the regulations adopted under
8 that Section; or

9 (2) the authority given to an attorney in fact under
10 IC 30-5-5-15(a)(3) to establish a revocable trust for the benefit
11 of a principal.

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